Supreme Court, U.S.
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No. 00-1912

IN THE

Supreme Court of the United States

TDY INDUSTRIES, INC.,

Petitioner,

v.

KAISER AEROSPACE AND ELECTRONICS CORPORATION and PAQ, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Petitioner's corporate disclosure statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

In the petition, Teledyne asserts that this Court has never defined the contours of claim preclusion in the bankruptcy context and that the courts of appeals are split in how they do so. In its opposition, Kaiser does not contest the first point and attempts unsuccessfully to challenge the second.

Kaiser's argument — that there is no circuit split regarding the application of claim preclusion where the first judgment is the confirmation of a bankruptcy plan — considers only the most elemental descriptions of claim preclusion offered by the courts of appeals. To say that the courts of appeals agree on the basic elements of claim preclusion ignores the subordinate legal principles applied by those courts — principles that are often strikingly and materially different.

The petition described several of those different legal principles, and Kaiser's opposition largely ignores them.[1] For example, in this case, the Eleventh Circuit held that claim preclusion could not apply as a matter of law when the facts giving rise to the second claim arose after the initiation of the bankruptcy proceeding. 244 F.3d at 1298 (App. at 17a). In *CoreStates Bank, N.A. v. Huls America, Inc.*, 176 F.3d 187 (3d Cir. 1999), the Third Circuit applied claim preclusion in just such a case.[2] The First and the Fourth Circuits have

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1. In its challenge to Teledyne's formulation of the question presented, Kaiser emphasizes that it filed the State Court Action before the bankruptcy court entered its order confirming the plan. Kaiser misses the point. The State Court Action was filed after the initiation of the bankruptcy proceeding and was based on facts arising after the initiation of the proceeding. More fundamentally, for *res judicata* purposes, the focus is on which case reached a judgment first. It does not matter which was filed first. Here, any judgment Kaiser might obtain in the State Court Action would be after the bankruptcy court's confirmation order.

2. Kaiser points to the Third Circuit's opinion in *Eastern Minerals & Chemicals Co. v. Mahan*, 225 F.3d 330 (3d Cir. 2000), (Cont'd)

also done so. *See In re Iannochino*, 242 F.3d 36, 40 (1st Cir. 2001) (applying *res judicata* to bar a subsequent claim that arose during the pendancy of the bankruptcy proceeding); *Spartan Mills v. Bank of America Illinois*, 112 F.3d 1251, 1257 (4th Cir. 1997) (same). Thus, there is an undisputable split among the circuits on a question of law.[3]

The opposition also attempts to distinguish these other cases by noting that Kaiser — although it had detailed knowledge of all of the bankruptcy proceedings and, in fact, attended virtually all hearings — sat back and asserted no objection to the confirmation of the plan. Kaiser's inaction simply serves to highlight the importance of *res judicata* in this setting, both for the policy reasons that generally support that doctrine and for the policy reasons underlying the need for finality in bankruptcy. Kaiser does not meaningfully dispute two basic assertions of the petition: (1) that Kaiser could have filed an objection to the confirmation of the plan under Section 1129(a) of the Bankruptcy Code, 11 U.S.C. § 1129(a); and (2) that, had Kaiser raised an objection, it would have obviated the need for the State Court Action.[4] For Kaiser to argue now that *res judicata*

(Cont'd)
and suggests that Teledyne has misread *CoreStates*. In *Eastern Minerals*, the court applied the same legal principles it did in *CoreStates*, but that application lead to a different result because of different facts. Kaiser does not — and cannot — assert that anything in *Eastern Minerals* rebuts Teledyne's argument that the Third Circuit's *legal* test is different from the Eleventh Circuit's test and that, as demonstrated above, the difference is potentially outcome-determinative.

3. In *CoreStates*, the Third Circuit described other differences among the courts of appeals with regard to other facets of *res judicata*. 176 F.3d at 197.

4. Had an objection succeeded, Kaiser would not be aggrieved and would have no need for a remedy. Had an objection failed, Kaiser's contract claim would have been adjudicated such that a subsequent claim would be barred.

should not apply because of its inaction flouts the purpose of claim preclusion. It also ignores the Third Circuit's enunciation of the effect of *res judicata*: that the doctrine bars claims that a party actually brought or that "it could have raised . . ." *CoreStates*, 176 F.3d at 181. Kaiser could have raised its objection to the bankruptcy plan but chose not to do so.[5]

Kaiser then argues that, even if there were a circuit split and even if the issues raised in the petition are important and of first impression for this Court, the Court should nonetheless deny the petition because this case is an "inappropriate" one for review.

Kaiser's first reason is, again, that it did not raise an objection in the bankruptcy court. As explained above, *res judicata* applies whether Kaiser actually filed an objection because it *could* have.[6] Neither the rule nor the policy underlying claim preclusion reward parties that sit on their rights and wait to collaterally attack what all expected to be a final judgment. Because this case presents the opportunity for this Court to underscore this important aspect of preclusion law in the bankruptcy context, while resolving the circuit conflict addressed above, it is particularly appropriate for review.

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5. If Kaiser is arguing that the Eleventh Circuit would not apply *res judicata* to situations in which a party could have, but did not, raise a claim, Kaiser merely emphasizes another distinction among the circuits. *See CoreStates*, 176 F.3d at 191.

6. Any "party in interest" may object to the confirmation of a bankruptcy plan. 11 U.S.C. § 1128. Courts have defined "party in interest" broadly and included any person or entity with a significant stake in the outcome of the bankruptcy proceeding. *See, e.g., E.F. Hutton & Co. v. Hadley*, 901 F.2d 979, 985-86 (11th Cir. 1990). As the proponent of a proposed reorganization plan that the bankruptcy court rejected (the Teledyne/Kaiser Plan), Kaiser was certainly a "party in interest."

Kaiser's second reason is that Piper's creditors have already been paid and that the only parties that would be affected by a judgment in this action would be Teledyne, DS&P and Kaiser. Kaiser's argument is wrong as a matter both of fact and of law. In the State Court Action, Kaiser seeks a constructive trust over a substantial portion of New Piper's stock. Thus, that corporation and all of its employees and creditors certainly would be affected.[7] Kaiser's argument is also legally without merit. First, the fact that a judgment would affect the rights of three parties with multi-million dollar interests in this matter is itself evidence that the case and the question presented remain "live" and important. Second, the issue before the Court at this point is whether it should accept the case for review in order to announce (or clarify) widely applicable legal standards that will apply prospectively nationwide in myriad cases.

There is no question that this Court has yet to offer guidance on the application of claim preclusion to bankruptcy cases. There is no question that the courts of appeals apply different legal principles when considering whether subsequent litigation is barred by a bankruptcy plan confirmation. There is no doubt that the question presented by the petition in this case will recur with greater frequency as the number of bankruptcy filings increases. As a matter both of law and policy, bankruptcy courts, trustees, debtors, creditors and other interested parties are in need of this Court's guidance so that there is both predictability and consistency in the application of claim preclusion to bankruptcy plan confirmations. At present, and as demonstrated by this case, there is neither.

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7. In his oral decision, the bankruptcy judge noted his concern about the effect of a constructive trust over New Piper's stock: "Kaiser in Count V is seeking to undo part of the confirmation process action over the stock which could threaten the future stability and viability of the Trust and, therefore, the implementation and successful implementation of the Chapter 11 case." (App. at 105a-106a).

For these reasons, and those in the petition, this Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

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